IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.5643 OF 2005

Shri Yeshwant Harishchandra Kambli ..Petitioner

Versus

Shri Kashinath Chandji Shinde ..Respondent

Mr.R.S.Datar for petitioner

None for respondent

CORAM : P.V.KAKADE, J.

DATE : 26TH APRIL, 2006.

P.C.:

1. Heard the learned advocate for the petitioner. None appears for the respondent, though he has filed affidavit in reply.

2. The petitioner filed the delay condonation application by way of Int.Notice No.5757 of 2003 in Appeal No.322 1 of 2003 in R.A.E. & R. Suit No.3746 of

1988. The present petitioner was the original plaintiff, who filed the suit against the defendant. The trial court dismissed the suit on 18.11.2002. An application for certified copy was made on 30th November,2002. The same was ready on 10th June, 2003. The appeal could not be filed for the ground mentioned in the application and hence the delay of in fact 192 days had occurred though it was stated that it was delay of 162 days.

3. While deciding the application the lower appellate court judge came to the conclusion that the ground mentioned was not sufficient and dismissed the application. Hence the present petition.

4. It appears from the record that the delay was caused due to the fact that the advocate for the petitioner did not file the appeal in time as the certified copy could not be collected in time to file the appeal. It was also submitted that he was of advanced age and was sick for which purpose delay had occurred. No doubt it is true that the medical certificate was not produced on record regarding the illness, however, it cannot be denied that the

petitioner is of advanced age, the lower court has held that if he was of advanced age, he could have appointed Constituted Attorney. However, this cannot be the ground for rejection of the application, especially when it is apparent from the record that basically it was the mistake on the part of the advocate of the petitioner. It is needless to mention that party should get proper benefit of effective adjudication at all levels.

5. Under the circumstances, I am inclined to hold that, considering the facts and circumstances involved in this petition, the delay is properly explained. In the result, the petition is made absolute in terms of prayer clause (a). The order dated 21.10.2004 is hereby set aside. The delay is condoned. The appellate court is directed to register the appeal according to law. This is on condition that the petitioner shall donate the amount of Rs.2000/= to the State Legal Authority within four weeks from the date of this order. Condition precedent.